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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,689	08/02/2001	Mark T. Anderson	56240US003	6481

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/05/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09 920689

Applicant(s)

ANDERSON, A

Examiner

ME?LGW

Group Art Unit

1616 9

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 3/20/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-108 is/are pending in the application.
- Of the above claim(s) 69-11, 21, 25, 31-34, 36, 39, 40, 42-84, 93-108 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-5, 12-20, 22-24, 26-30, 35, 37, 38, 41, 85-92 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-108 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6, 9-11, 21, 25, 31-34, 36, 39, 40, 42-84, 93-108 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5.

It is noted that applicants traverse species requirement, on the grounds that a search, has been carried out. However, examiner finds the species patentably distinct, while a search for the generic invention, unless all species are equivalent, does not divulge all specific species; the time for searching and examining each of the combination and permutations of species would constitute a serious burden. The species codlemone, silica, surfactants and water will be examined.

The 112 rejections are withdrawn, in accord with applicants explanations and amendments.

Claims 1, 2, 4-5, 12-17, 20, 24, 27-30, 35 and 85 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Constantz-6005162.

The rejection of record is maintained. Various modalities of particles incorporating bioactive agents are taught. As now amended and argued, surfactants may be incorporated with bioactive (col.5, last ¶, col.6, 2<sup>nd</sup> ¶). The particles can be porous (col.8, lines 16-18) as described.

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Claims 1, 2, 4, 5, 13-17, 20, 24, 27, 29, 30, 35, 85 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lee et al 6027742.

The rejection of record is maintained, again, the amendments/explanations are seen as requiring latex or surfactant; met by the lubricants-lipids, fatty acids (col.13, lines 36-39, or col.19, lines 50-56) and bioactive (col.14, line 50-line 4, col.15). Incorporation of these components would necessitate disposition in the instantly styled channels, absent any showing by applicant of absence of such additives within the formed particles of Lee.

Claims 1, 3, 5, 13, 18-20, 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Beck 5057296.

The rejection of record is maintained and here too, Beck is seen as providing first, the required surfactant then, in operation, the active agent, thus meeting the instant claim language.

Claims 1-5, 12, 13, 18-20, 22, 24, 26-30, 35, 41, 85 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Zhou and Homa, '99.

The instant surfactant C<sub>16</sub>-TMA, active (pc or ChL) within channels of an inorganic particle (p. 684, mid page, col.1) is disclosed, for use as molecular sieves, for example (¶ 1, p. 633) thus of a micron sized particle, the properties which would provide the instant X ray diffraction peak (col.1, p. 684, 2<sup>nd</sup> ¶).

Pore size is 10-100Å° (first ¶, p.683), metal oxide @ p. 684, col.1, bottom).

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Claims 1-5, 7, 8, 12, 13, 18-20, 22, 23, 24, 26-30, 37, 38, 41, 85-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zhou and Homa '99 in view of Ohno 4579779.

Zhou and Homa (above) teach the instant particles, but actives exemplifier are not pheromones. Ohno provides similar particulate compositions, suitable for incorporation of a variety of actives, including any sex pheromones (example 7) of the instant size.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize silica particle adsorbents, to use that of Zhou-Honma, with actives as desired for intended purpose, such as pheromones shown by Ohno to be deliverable in silicate structure. Motivation to provide the specific active is that of intended use-to control insects, a sex pheromone would provide ~~attraction~~ <sup>attraction</sup> without loss of active in the well controlled structures of Zhou/Honma. The particular sex pheromone, inclusive of the instant homologs of the Ohno example for Tea tortrix control, would be within the purview of one in the art to use, for control of specific insects, under the generic "sex pheromone".

Claims 1, 2, 4, 5, 12-16, 18-20, 22, 24, 26-30, 35, 41, 85 are rejected under 35 U.S.C. 102(b) as being anticipated by Beall et al 5730996.

The instant particles, actives, water and (col.4, lines 40-55) surfactant or latex are known: See example, col.29, 30 particles are 44 microns +.

However, Nanoscale particles are also envisioned (col.24, lines 39-43).

Channels are 5-100Å° (abstract).

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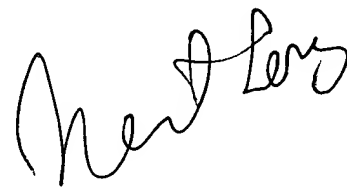
Applicant's arguments filed 3/20/03 have been fully considered but they are not persuasive. Applicants arguments have been considered, and in view of amendments and explanations, rejections have been withdrawn re directed and expanded. The references cited in fact are seen as showing the now-claimed inventions in accord with applicants terminology.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd  
May 30, 2003



NEIL S. LEVY  
PRIMARY EXAMINER